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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/666,356	09/20/2000	Daniel J. Parker	HILB/ 609C3	8608
26875	7590	10/02/2003	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			MILLER, WILLIAM L	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 10/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/666,356

Applicant(s)

PARKER, DANIEL J.

Examiner

William L. Miller

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 July 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4,6,8-13,15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,8-13,15 and 17-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Specification*

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification fails to recite the pedestal including a column wherein the ornament is mounted atop the column, the receptacle is removably received in the column, and the gasket is interposed and compressed between the ornament and the column.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 8-11, 13, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by British Pat. No. 2238062 (hereinafter "British '062").

4. British '062 discloses a method of memorializing a deceased and/or combination lawn and garden sculpture and cremation remains container comprising: a pedestal (Fig. 1a) including a column 1 having an open first (upper) end, a closed second (lower) end, and at least one wall therebetween; a receptacle 4 receiving the cremated remains removably received in the column of the pedestal, the receptacle including an open first (upper) end, a closed second (lower) end, and at least one wall therebetween; the receptacle being a cylinder and including a cover of smaller diameter at the upper end thereof, the cover being inherently removable; an ornament 10,

namely a plaque, mounted atop the column of the pedestal; and an annular gasket being viewed as element 7 which is interposed and compressed between the ornament and the column.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6, 15, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over British '062 in view of Virginia Metalcrafters "In the Garden" (1997) (hereinafter "Virginia Metalcrafters").

7. British '062 discloses the ornament as a plaque as opposed to the ornament being an armillary as claimed by the applicant. Virginia Metalcrafters discloses lawn and garden sculptures including a pedestal supporting an ornament wherein the ornament is an armillary. Therefore, as supported by Virginia Metalcrafters, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the lawn and garden sculpture of British '062 by utilizing an armillary as the ornament for aesthetic purposes. Further, a change in ornamental design having no mechanical function is an aesthetic design consideration within the skill of the art. In re Seid, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

8. Claims 12 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over British '062 in view of Japanese Pat. No. 408010294 (hereinafter "Japan '294").

9. British '062 fails to disclose the cover including a radially inner cylindrical portion and a radially outer circular lip wherein the inner portion fits within an inside of the upper end of the receptacle/cylinder and the lip fits on an outside of the upper end of the receptacle/cylinder.

Japan '294 discloses a receptacle/cylinder 1 for receiving cremation remains and a cover 2 having a radially inner cylindrical portion and a radially outer circular lip wherein the inner portion fits within an inside of the upper end of the cylinder and the lip fits on an outside of the upper end of the receptacle/cylinder to effectively close the receptacle/cylinder. Therefore, as taught by Japan '294, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify British '062 by utilizing a cover including a radially inner cylindrical portion and a radially outer circular lip wherein the inner portion fits within an inside of the upper end of the receptacle/cylinder and the lip fits on an outside of the upper end of the receptacle/cylinder thereby enhancing the closure thereof.

#### ***Response to Arguments***

10. The applicant argues British '062 fails to disclose the pedestal having a column. According to Merriam-Webster's Collegiate Dictionary Tenth Addition, a "column" can be defined as a supporting pillar, and a "pillar" can be defined as a firm upright support for a superstructure. Therefore, by definition, British '062 element 1 can be viewed as a "column" as element 1 is a firm (stone) upright structure via its vertical/height dimension and is capable of functioning as a supporting structure (building block). It is of importance to note the definition of a "column" does not require any specific vertical/height dimension.

11. Further, the examiner notes the applicant did not present any arguments regarding any other details of the prior art rejections made under 35 USC § 102/103 in the previous Office action (Paper #12) and has thus effectively conceded thereto.

*Conclusion*

12. Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William L. Miller whose telephone number is 703 305 3978. The examiner can normally be reached on Tuesday-Thursday.

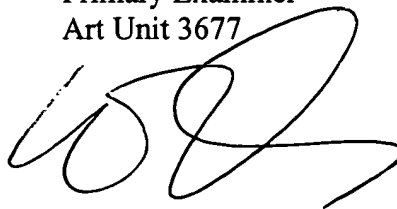
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703 306 4115. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1113.

William L. Miller  
Primary Examiner  
Art Unit 3677

A handwritten signature in black ink, appearing to be 'WLM', written over the printed name and title.

wlm  
09/30/03